In the
United States Circuit Court of Appeals
For the Ninth Circuit

No. 6555

MICHAEL SAKSAGANSKY,

Appellant,

vs.

LUTHER WEEDIN, United States Commissioner of Immigration, District No. 28,

Appellee.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division

HONORABLE JEREMIAH NETERER, JUDGE

Brief of Appellee

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On the Brief

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STATEMENT OF THE CASE

The appellant, Michael Saksagansky, is 23 years of age, was born in Russia, and is a citizen of Russia. He was in Constantinople for about two months immediately prior to coming to the United States. He came to this country on the steamer "Madonna" and was landed at the port of Providence, R. I., Novem-

ber 1, 1923. He resided in Hartford, Conn., and New York City for several years and came to Seattle about the first of the present year. On February 7, 1931, while conversing on the dock with some seamen from the steamer "Oakland," he was apprehended by Immigrant Inspector Leonard I. Cornell and certain Seattle police officers, and was taken to the Seattle Police Station for investigation. On February 9, 1931, a statement was taken from him at the Seattle City Jail by Immigrant Inspector Leonard I. Cornell concerning his entry into, and his right to be and remain in, the United States. On the basis of the said statement the Commissioner of Immigration made application to the Secretary of Labor for a warrant for his arrest, which was issued by W. N. Smelser, Assistant to the Secretary of Labor, February 11, 1931. He was duly arrested by an immigrant inspector under authority of said warrant and further hearings were granted him before Immigrant Inspectors Leonard I. Cornell and John P. Boyd, Jr., March 5 and March 30, 1931. Thereafter the entire record was forwarded to the Secretary of Labor and, on May 7, 1931, a warrant of deportation was issued by W. N. Smelser, Assistant to the Secretary of Labor, commanding that he be returned to Russia. He then filed a petition for a Writ of Habeas Corpus in

the United States District Court for the Western District of Washington, Northern Division. The case now comes before this court on appeal from the order of the District Court denying the said petition.

ARGUMENT

The warrant of arrest charges the appellant with having been found in the United States in violation of the immigration act of October 16, 1918, as amended by the act of June 5, 1920, in that he believes in, advises, advocates, or teaches the overthrow by force or violence of the government of the United States or of all forms of law. The warrant of deportation contains the same finding, with the exception that the words "or of all forms of law" are omitted.

The act approved October 16, 1918 (40 Stat. 1012), as amended by the act approved June 5, 1920 (41 Stat. 1008) (8 U. S. C. A., Sec. 137), provides as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1 of the act entitled 'An act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes,' approved October 16, 1918, is amended to read as follows: That the following aliens shall be excluded from admission into the United States: * * * (c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any

organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law. * * * "

Section 2 of the same act provides as follows:

"That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration act of February fifth, nineteen hundred and seventeen. The provisions of this section shall be applicable to the classes of aliens mentioned in this act irrespective of the time of their entry into the United States."

Section 19 of the Immigration Act of February 5, 1917 (8 U. S. C. A., Sec. 155), provides as follows:

"That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported. * * * In every case where any person is ordered deported from the United States under the provisions of this act, or of any law or treaty, the decision of the Secretary of Labor shall be final."

Section 20 of the same act (8 U. S. C. A., Sec. 156) provides:

"That the deportation of aliens provided for in this act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States. * * *"

The record does not show that there was anything unfair to the appellant in the *conduct* of his hearings before the immigration officials, nor does the petition contain any specific allegation of unfairness in that respect.

The transcript of the testimony taken at the preliminary hearing accorded the appellant February 9, 1931, shows the following:

"(Inspector Cornell) Mr. Saksagansky, I am an immigrant inspector in the service of the United States Government. At this time I wish to make

some inquiries concerning your entry into the United States and your right to be and to remain in this country.

"A. All right.

* * * *

"Q. (Referring to the bourgeoisie) Do you believe that they should not have any say in the functioning of the Government?

"A. Yes.

"Q. Why?

"A. Because they are in the minority.

"Q. By the bourgeoisie you mean the upper or middle classes?

"A. No, capitalistic class.

"Q. You believe they should have no say in the Government?

"A. Yes.

"Q. Do you believe that we should have capitalists?

"A. No; I don't think so.

* * * *

"Q. Then, as I understand it, you are firmly of the belief that property owned by individuals in the United States or in any other country should be made the property of the State?

"A. Yes.

* * * *

"Q. Do you believe that if necessary this struggle should take place and confiscation actually happen to their property?

"A. Yes.

"Q. In the event these people, both in the United States and other countries, refuse to give up their property, it will then be necessary to take it from them, will it not?

"A. Of course.

"Q. And do you believe that it should be taken from them by force and violence if no other means exist?

"A. Of course.

* * * *

"Q. You believe then that it will be necessary for the workers to take over the government in all countries?

"A. Eventually it will be so. It will come to the workers taking over the government.

"Q. Is there any country in the world today where a form of government as you describe exists?

"A. Yes; in the Union of Socialist Soviet Republics, commonly known as Russia.

"Q. In your opinion is this the ideal government?

"A. Yes.

"Q. Are you firm in your belief in your own mind that a similar form of government to that as exists in Russia today will exist in not only the United States but in all countries eventually?

"A. Yes.

"Q. Do you believe that it should exist?

"A. Yes.

"Q. You then believe that it will be necessary for the Workers in all countries and the United States included to take over the functions of the Government?

"A. Yes.

* * * *

"Q. There will then be no individual property of any kind?

"A. Except personal.

"Q. By that do you mean house and lot?

"A. Possibly a house and lot and your clothing.

"Q. You actually are sincere in your belief that this form of government will take place?

"A. Yes.

"Q. You are also sincere in your belief that if it does take place a revolution will be necessary?

"A. Of course it is necessary.

* * * *

"Q. Do you believe that this confiscation of property and the taking over the government in the United States and in all countries should be accomplished by force and violence if no other means is sufficient?

"A. Yes."

* * * *

In his memorandum decision of July 11, 1931, Judge Neterer quotes considerable of appellant's testimony, in addition to the foregoing. As this testimony is set forth on pages 12-16 of the "Transcript of Record," it does not appear necessary to again quote it here.

The report of this hearing (February 9, 1931) also shows that the appellant attended various Communist meetings, spoke at some of said meetings, and, when apprehended, was in possession of much Communist literature which is referred to in detail by Judge Neterer on page 12 of the "Transcript of Record."

At the hearing under the warrant of arrest March 5, 1931, the appellant testified that, so far as he knew, all the statements which he made before Im-

migrant Inspector Cornell, February 9, 1931, were true and correct in every detail. At the hearing March 30, 1931, the appellant presented a written statement which sets forth that he does not believe in the overthrow of the United States Government as such, but does believe that the "invisible government" must be eliminated and the people actually allowed to govern themselves, and denies that there is any truth whatever in the charges against him. This written statement was, of course, drawn up after the appellant had had ample opportunity to consult with his counsel. If such statement could be considered as testimony, which, of course, it is not, the immigration officials would not have been obliged to believe it, under such circumstances.

Ex parte Ematsu Kishimoto (this court), 32 F. (2d) 991.

Ng Kai Ben v. Weedin (this court), 44 F. (2d) 315.

Ghiggeri v. Nagle (this court), 19 F. (2d) 875.

Prentis v. Seu Leung (C. C. A. 7), 203 F. 25.

When decisions are made by immigration officials on conflicting evidence the courts have no jurisdiction:

Ng Lin Go v. Weedin (this court), 5 F. (2d) 960.

Wong Fook Ngoey v. Nagle (this court), 300 F. 323.

Lee Hing v. Nagle (this court), 295 F. 642.

Cahan v. Carr (this court), 47 F. (2d) 604.

and numerous other cases.

It will be noted that, in the first part of the hearing February 9, 1931, the appellant refused to answer certain questions as to his belief in the teachings of the Communist Party, his belief in the present form of the Russian Government, his belief in the overthrow of the present government of the United States and the overthrow of all governments with the exception of the present Soviet Government of Russia. His refusal to answer these questions is entitled to be considered as evidence against him.

Vajtauer v. Commissioner of Immigration, 273 U. S. 103.

Bilokumsky v. Tod, 263 U. S. 149.

Counsel for the appellant states that, prior to the receipt of the warrant of arrest, the appellant "was subjected to severe grillings" and to what are known as "third degree" methods, and argues that everything prior to the actual hearing after the said warrant was issued should be eliminated from considera-

tion (pp. 2, 4, 5 of his Brief). The report of the said hearing entirely negatives these allegations and shows that appellant's testimony was given voluntarily. There is no rule of law which requires that an alien under investigation prior to application for a warrant of arrest shall be entitled to the benefit of counsel, and any testimony given by such an alien before immigration officials in the course of such investigation is admissible as evidence, provided such testimony is given voluntarily:

Low Wah Suey v. Backus, 235 U. S. 460.

Ng Kai Ben v. Weedin, supra.

Ex parte Kaizo Kamiyama (this court), 44 F. (2d) 503.

Ex parte Ematsu Kishimoto, supra.

Chan Wong v. Nagle (this court), 17 F. (2d) 987.

Bilokumsky v. Tod, supra.

Vajtauer v. Commissioner of Immigration, supra.

Ex parte Vilarino (D. C. Cal.), 47 F. (2d) 912.

Plane v. Carr (this court), 19 F. (2d) 470.

Tom Evanoff et al. v. Bonham, this court, June 15, 1931.

The record shows that Attorney Clarence L. Gere was present at and participated in the hearings March 5 and March 30, 1931, the latter of which was accorded at the appellant's request.

The fact that appellant's hearings were held while he was in custody in the Seattle City Jail did not constitute an invasion of his rights:

Ematsu Kishimoto v. Carr (this court), 32 F. (2d) 991.

Bilokumsky v. Tod, supra.

Unless it be clearly shown that there was denial of a fair hearing by the immigration officials, that the finding was not supported by any substantial evidence, or that there was erroneous application of a rule of law, the decision of said officials is final:

Ng Fung Ho v. White, 259 U. S. 276.

Upon collateral review in habeas corpus proceedings, it is sufficient that there was some evidence from which the conclusion of the administrative tribunal could be deduced, and that it committed no error so flagrant as to convince the court of the essential unfairness of the trial:

Vajtauer v. Commissioner of Immigration, supra.

Tisi v. Tod, 264 U. S. 131.

See also:

Kwock Jan Fat v. White, 253 U. S. 454.

United States v. Ju Toy, 198 U. S. 253.

Ju Wah Son v. Nagle (this court), 17 F. (2d) 737.

Ex parte Vilarino, supra.

and numerous other cases.

"Irregularities on the part of the government official prior to, or in connection with, the arrest would not necessarily invalidate later proceedings in all respects conformable to law * * * and if sufficient ground for his detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment:"

Bilokumsky v. Tod, supra.

Counsel for appellant states (p. 14 of his Brief) that the appellant refused to answer certain questions, but only when he knew that any answer he gave would be distorted, misinterpreted and misconstrued, and (p. 5) that an alien in deportation proceedings apparently cannot get a fair hearing in the Department of Immigration. He also charges in effect (p. 18) that the summary, findings and recommendation in this case constitute some sort of a "put up job" in accordance with some established policy

of the Department of Labor, and (p. 15) even charges prejudice on the part of District Judge Neterer. These statements and charges are too absurd to require any answer.

On page 19 of his Brief counsel also states that the Department of Labor surreptitiously ordered the appellant to be deported *to Shanghai, China, and from there to find his way, if possible, to the shores of Siberia.* There is absolutely no foundation for this statement, and of course such an order would be entriely in violation of the provisions of Section 20 of the Immigration Act of February 5, 1917, *supra.*

We have carefully examined all of the authorities cited by counsel and have found nothing therein which should cause this court to render an opinion in favor of the appellant.

CONCLUSION

The appellant was accorded a fair hearing by the immigration officials. The record discloses ample evidence to show that he is subject to deportation to Russia under the statutes cited, and for the reasons set forth in the warrant of deportation. Consequently

the order of deportation is final. The District Court did not commit error in denying the petition for a Writ of Habeas Corpus and its judgment should be *affirmed.*

Respectfully submitted,

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